IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 18 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT TAX

Versus

MALLIKA SARABHAI

Appearance:

1. GIFT TAX REFERENCE No. 18 of 1986

MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL FOR MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred to us for our opinion in respect of the assessment year 1976-77 :

Question No.1.

"Whether, the Tribunal has not erred in law and on facts in holding that the full value of the property for which the power of appointment was exercised by the assessee in favour of certain trusts could not be taken for the purpose of Gift-tax but only the value of the assessee's interest therein with reference only to the date of exercise of the power of appointment has to be taken ?"

Question No.2.

"Whether, the Appellate Tribunal has not erred in law and on facts in holding that the value of the disclaimer made by the assessee cannot be treated as a gift and the G.T.O. was, therefore, not justified in adding any amount on that account ?"

Question No.3.

Whether, the Appellate Tribunal has not erred in law and on facts in holding that since there was no facts in holding that since there was no difference between the value of the shares and the value of jewellery there was no deemed gift within the meaning of Section 4(1) of the G.T.Act,1988 ?

Question No.4.

Whether, the finding of the Appellate Tribunal that on the facts which are peculiar in the instant case the value of the jewellery and the value of the shares was required to be treated as equal and hence there was no question of adopting any other method for the purpose of valuation and for bringing to tax the difference on any basis?"

3 So far as question No.1, Learned Counsel for the parties fairly state that this question has already been

decided by this Court as per the decision dated 4/9/2001 in Gift Tax Reference No.2 of 1986. Following the said decision we hold that the Tribunal did not err in holding that the full value of the property for which the power of appointment was exercised by the assessee in favour of certain trusts could not be taken for the purpose of Gift-tax but only the value of the assessee's interest therein. We accordingly answer question No.1, in favour of the assessee and against the revenue.

4 As regards question No.2, the Tribunal held that the value of the disclaimer made by the assessee cannot be treated as gift and the Gift Tax Officer was not justified in adding any amount on that account. The Tribunal followed the decision of this Court in C.G.T. vs. Ansuya Sarabhai, 133 I.T.R.108. At the hearing of this reference the learned Counsel points out that the aforesaid decision of this Court in Ansuya Sarabhai's case (supra) has been confirmed by the Apex Court in the case of C.I.T. vs. Ansuya Sarabhai (1999) 239 I.T.R.262. We accordingly hold that the Appellate Tribunal did not err in holding that the value of the disclaimer made by the assessee cannot be treated as a gift and transactions giving rise to this reference were bonafide. We accordingly answer question No.2 in favour of the assessee and against the revenue.

5 In regard to question Nos. 3 and 4, learned Counsel for the parties state that these questions have been considered in Gift Tax Reference No.16 of 1986, which was on similar facts. Considering the facts herein which are similar to those giving rise to Gift Tax Reference No.16 of 1986 decided on 6/9/2001, we answer question Nos. 3 and 4 in favour of the assessee and against the revenue,

6 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt